

Advisory Opinion

IECDB AO 2011-04

July 19, 2011

Samuel Langholz
State Public Defender
4th Floor Lucas Building
321 E. 12th Street
Des Moines, IA 50319

Dear Mr. Langholz:

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapter 68A and 68B, Iowa Code section 8.7, and rule in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise the Board that you wish to hire an individual who has served as the State Public Defender within the past two years to serve as an employee in a local public defender office.

QUESTION:

It is permissible for an individual who served as the State Public Defender within the past two years to work in a local public defender office?

OPINION:

Iowa Code section 68B.7(2) states “[a] person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall not, within a period of two years after the termination of such service . . . [a]ccept employment with that commission, board, or agency.”

This matter turns on whether the State Public Defender is a “head of or on a commission or board of a regulatory agency or [serves] as a deputy thereof.”

Iowa Code section 13B.2 establishes the position of State Public Defender “within the Department of Inspections and Appeals” and provides that the State Public Defender is appointed by the Governor, subject to confirmation by the Senate.

Iowa Code section 68B.2(23) provides a list of regulatory agencies which includes the Department of Inspections and Appeals but not the Office of the State Public Defender.

The State Public Defender does not serve as the head of the Department of Inspections and Appeals nor does he serve on a commission or board of the Department. See generally Iowa Code ch. 10A (establishing the Department). Since the State Public Defender is independently appointed by the Governor and confirmed by the Senate, and has independent duties imposed on him by chapter 13B of the Iowa Code, the State Public Defender is not a “deputy” of the Director of the Department of Inspections and Appeals. Accordingly we conclude section 68B.7(2) does not prohibit the hiring of a former State Public Defender as an employee of the State Public Defender within two years after completing his service as State Public Defender.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Patricia Harper, Vice Chair
Gerald Sullivan
John Walsh
Saima Zafar
Carole Tillotson

Submitted by: Megan Tooker, Board Legal Counsel